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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
BEEHIVE TELEPHONE COMPANY, INC.) CC Docket No. 97-249
BEEHIVE TELEPHONE, INC. NEVADA)
)
Tariff F.C.C. No. 1) Transmittal No. 8

To: Chief, Common Carrier Bureau

REPLY TO OPPOSITION TO MOTION FOR EXTENSION OF TIME

Beehive Telephone Company, Inc. and Beehive Telephone, Inc. Nevada (collectively "Beehive"), by their attorneys, and pursuant to FCC Rule Section 1.46, submit their reply to AT&T's April 7, 1998 Opposition to Beehive's April 3, 1998 Motion for Extension of Time ("Motion") to file its Direct Case in this proceeding in response to the Commission's designation order. See *Beehive Telephone Co., Inc.*, DA 98-502 (Com. Car. Bur. Mar. 13, 1998) ("*Designation Order*"). In support, the following is shown:

AT&T's opposition is incredibly petty and two-faced. While railing against Beehive's request for a one-day extension of time to submit its Direct Case, AT&T asks for ten additional days to respond to that Direct Case. While arguing that the travel and military duty schedules of Beehive's attorneys are not material considerations favoring grant of Beehive's request, the opposition cites AT&T's counsel's travel plans as reason for granting it an extension of time. And, while suggesting that Beehive's one-day extension request, "has seriously delayed the investigation," AT&T seemingly lacks any concern with delay in requesting an extension of an order of magnitude more than Beehive sought. Moreover, it is

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truly ironic that AT&T complains about the amount of Beehive's legal fees, when it is responsible for ginning those fees up with filings such as its opposition.

With respect to the specific allegations of AT&T's opposition, Beehive has the following comments.

First, AT&T suggests that Beehive is somehow remiss in not having subsidiary expense data readily available, citing FCC Rule Section 32.12. AT&T apparently did not understand Beehive's Motion. Section 32.12 merely provides that when the Commission requires a carrier to maintain subsidiary records, those records will be maintained in a manner so that they will be readily available. It does not answer the point Beehive made in its Motion, that FCC Rule Section 32.5999(a)(3) provides that Class B LECs, like Beehive, are only required to maintain subsidiary expense records if the Commission so directs. Since the Commission has never directed Beehive to provide such expense records, Beehive did not have them. Thus, in responding to the requirements of the *Designation Order*, Beehive has had to construct them from its accounting records. As Beehive explained, this resulted in a severe accounting burden to it to produce the requested records by April 3, 1998.

Second, AT&T discounts Beehive's showing of the difficulty of obtaining documentation of legal expenses from its various counsel. Nevertheless, despite repeated requests by Beehive's FCC counsel to the five other counsel who represented Beehive in the numerous judicial and administrative proceedings which are at issue, as of the filing of the motion, Beehive did not have all the information

the Commission required it to produce in its Direct Case. Indeed, the last of that information came into this office at 5:25 pm on the evening of April 3, 1998. It simply could not have been included in the Direct Case that day.

Third, AT&T complains that it missed the opportunity to have a weekend to review Beehive's Direct Case. However, when undersigned counsel for Beehive called AT&T counsel, Ms. Donovan-May, to advise her that Beehive was filing an extension of time request, undersigned counsel consented to an additional day for AT&T to file any response to Beehive's Direct Case. This consent was in fact represented in the Motion. Thus, contrary to AT&T's whine that it would lose three of the seven calendar days it had to review the submission, AT&T -- by Beehive's counsel's agreement -- would have had the weekend it implies it needs for review.^{1/}

Fourth, as to the matter of service of the Motion on AT&T, AT&T was not entitled to either notice or service of the pleading. Nevertheless, undersigned counsel telephonically advised AT&T's counsel of the filing of the Motion, and agreed to telecopy to

^{1/} Since AT&T also complains that Beehive is supplementing its Direct Case filing, and to avoid yet another round of wasteful pleadings, Beehive hereby notes its consent to grant an extension of time to AT&T to file any response to Beehive's Direct Case within five business days after today, or April 15, 1998, as Beehive is this day supplementing its Direct Case. However, the ten day extension of time requested by AT&T is entirely unjustified, and should be denied given that AT&T has not shown how it cannot adequately prepare its response in the seven calendar days set by the *Designation Order*. If AT&T is given a windfall period to prepare its response, Beehive ought to be accorded a comparable additional period to file its reply.

counsel a copy of the Motion. Undersigned counsel directed a staff member of his firm to telecopy the motion to AT&T's counsel, and it was believed that this was done. Unfortunately, counsel is unable to find proof that the telecopy was made, accepts AT&T counsel's word that the telecopy was not received, and apologizes for the apparent omission.^{2/}

Fifth, perhaps Beehive could have submitted its Direct Case in partial form on April 3, 1998, and then supplemented it. However, that partial Direct Case would have been substantially incomplete, and much less meaningful than the substantially complete Direct Case filed the next business day. Counsel exercised his best professional judgement that an extension of one day was necessary to submit the Direct Case in acceptable condition. As it was, even with the extra day, supplementation was necessary. The Commission should not forget that Beehive is not AT&T with unlimited resources, hundreds of lawyers and thousands of accountants. It is little more than the one-man operation of Mr. Brothers, who provides telephone service to areas of the states of Nevada and Utah that no one else will serve. There ought to be some allowance for the limitations of resources of such companies as Beehive. Again, it is ironic that with all of its resources at its disposal, AT&T is here in an

^{2/} Counsel previously agreed to telecopy Beehive's Direct Case, sans exhibits, to AT&T the day of filing, and to deliver overnight the complete Direct Case. This was done, giving AT&T the absolute maximum time to prepare its response. Thus, the implication AT&T may be trying to make that Beehive has somehow attempted to fluster its preparation of any response it may file to the Direct Case, is simply false.

opposition pleading asking -- in a procedurally improper manner about which Beehive will not quibble -- for a ten day extension, because Beehive has asked for but one additional day.^{3/}

Beehive's request was appropriate, and the time requested was necessary for it to present its Direct Case. The Commission should grant the requested extension, and deny AT&T's opposition except to grant it five business days from today's date to submit any response it may have to Beehive's Direct Case.

Respectfully submitted,

BEEHIVE TELEPHONE COMPANY, INC.
BEEHIVE TELEPHONE, INC. NEVADA

By: 

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April 8, 1998

^{3/} AT&T itself has had the occasion to request one-day extensions of time in proceedings with Beehive. See, e.g., Motion to Accept Late Filed Pleading, E-97-14 (May 20, 1997). To date, Beehive has not seen why it serves any purpose to oppose granting such a courtesy.

CERTIFICATE OF SERVICE

I, Katherine A. Baer, a secretary in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 8th day of April, 1998, had a copy of the foregoing REPLY TO OPPOSITION TO MOTION FOR EXTENSION OF TIME hand-delivered to the following:

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